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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,371	04/01/2004	Christoph Becke	2001P14042WOUS	9654
46726 7590 08/20/2007 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562			EXAMINER WILKENS, JANET MARIE	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 08/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/816,371	Applicant(s) BECKE ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

Drawings

The new drawing sheet filed June 7, 2007 has been approved by the examiner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. D483,384. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and patent teach a one-piece upper door storage compartment including a first portion with a first depth and a second portion with a second depth less than half the first depth

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(see Fig. 2 of patent); the portions having substantially equal lengths (see Fig. 2 of patent). In between the portions is an intermediate wall with a horizontal reinforcing web (see Figs. 1 and 3). Note: since the patent is a design patent, what is shown in the figures is what is covered by the claim. Figs 2 meeting the limitations found in claims of the instant invention.

For claim 11, the patent fails to teach that the portions have different lengths. However, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the compartment as desired, including forming the portions with different lengths, depending on the desired need of the person designing/constructing the compartment (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

For claim 16, the patent fails to show a refrigerator door or housing. However, the shelf is disclosed as being a refrigerator shelf in the claim. Therefore, it would have been an obvious design consideration to one having ordinary skill in the art to use the shelf on the door of a refrigerator (with a housing and other door compartments), depending on the desired need of the person using the shelf or designing the refrigerator.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gentz (2,074,785). Gentz teaches a refrigerator having a door with door storage compartment (Fig. 1; see Attachment A) comprising: at least one first generally boxed storage compartment portion (a) having a full first horizontally-directed depth (b) and a first vertically-directed storage depth (c); and at least one second generally boxed shaped storage compartment portion (d) having a front wall (front bars), the second storage compartment portion having a second horizontally- directed depth (e) being less than the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth (c), whereby the second vertically-directed storage depth of the second storage compartment portion is substantially the same as the first vertically directed storage depth. The compartment portions are separated by an intermediate wall (39).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gentz. As stated above, Gentz teaches the limitations of claim 9, including two portions of a compartment with substantially equal lengths, the portions having different depths. For claim 11, Gentz fails to teach that the portions have different lengths. However, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the portions as desired, including forming them with different lengths, depending on the desired need of the person designing/constructing the compartment (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

For claim 16, Gentz fails to teach that the second depth is less than half the first depth. However, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the second section as desired, including forming its compartment with a smaller depth, depending on the desired need of the person designing/constructing the section (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

Allowable Subject Matter

Claims 17 and 18 are allowed. The allowable subject matter being a refrigerator having a door with door storage compartment comprising: at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth; and at least one second

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storage compartment portion having a sloped front wall extending angularly downwardly between an access opening and a base of the second storage compartment portion, the base defining an smaller area than the access opening, the second storage compartment portion having a second horizontally- directed depth being less than half of the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth.

Response to Arguments

Applicant's arguments filed June 7, 2007 with respect to the rejection of the claims under Johnson (and various secondary references) have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Gentz.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wilkens
August 17, 2007


JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637

Attachment A

March 23, 1937.

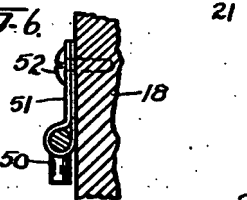
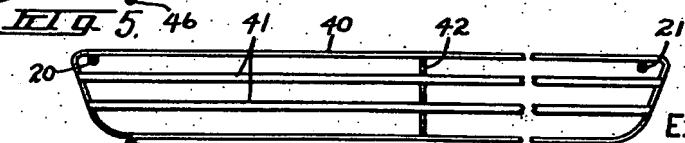
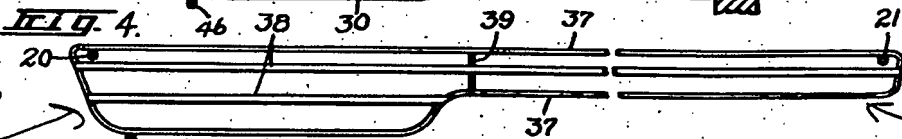
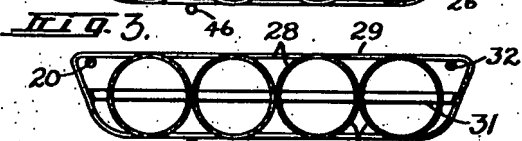
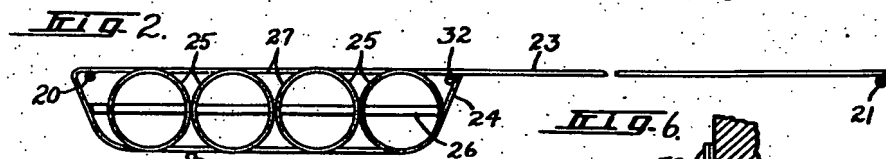
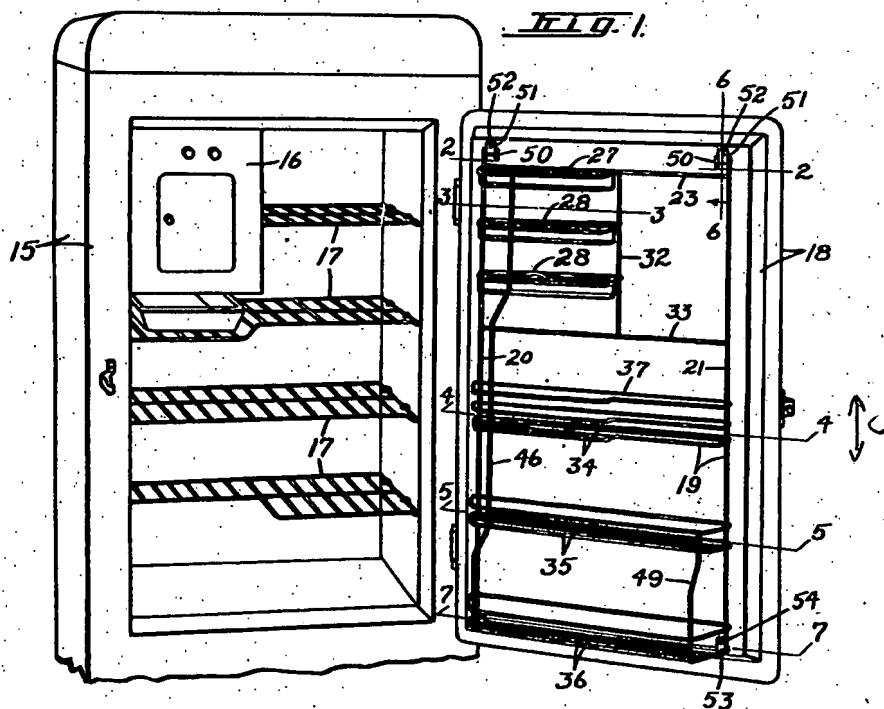
E. W. GENTZ

2,074,785

REFRIGERATOR CABINET DOOR RACK

Filed July 19, 1935

2 Sheets-Sheet 1



WITNESS 46
J. J. Mains

INVENTOR
EDWARD W. GENTZ
BY
Theodore C. Simonton
ATTORNEY